

178099



GENERAL MOTORS NORTH AMERICA  
Structure & Safety Integration

DEPT. OF TRANSPORTATION  
DOCKETS

02 JUL -1 PM 2: 25

June 28, 2002

The Honorable Jeffrey Runge, M.D.  
Administrator  
National Highway Traffic Safety Administration  
400 Seventh Street, S.W.  
Washington, D.C. 20590

USG 3692

RE: Confidential Business Information  
(67 Fed. Reg. 21198, April 30, 2002)  
Docket No. NHTSA 2002-12150 — 11

Dear Dr. Runge:

General Motors Corporation (GM) submits these comments in response to NHTSA's proposed revisions to Part 512.

Because the disclosure of "early warning" data will cause substantial competitive harm, with no associated benefit to motor vehicle safety, GM joins the Alliance of Automobile Manufacturers in asking NHTSA to adopt a final rule that protects that confidential business information, consistent with the Safety Act's mandate.

#### I. GM Maintains the Confidentiality of "Early Warning" Warranty Data

Within GM, the warranty claim system is used, first and foremost, as a means for dealers to submit warranty repair claims to GM for payment. The system is also used for claims for recall repairs, special policies, and individual goodwill adjustments. Over the years, GM has used warranties with different time and mileage limits and variations in the scope of coverage. There are also differences in the limits for emissions-related components.

Under the proposed "early warning" rule, manufacturers will submit quarterly counts of warranty claims by make, year, and model of vehicle, divided into 22 categories that, with one exception, broadly identify vehicle systems or sub-systems. This data will show total and category claims experience for each make, model, and year going back ten model years. In GM's case, it involves aggregating thousands of different labor operations.

GM does not voluntarily disclose to the public warranty data of the type called for in the "early warning" proposed rule. GM files emissions warranty information reports with the California Air Resource Board that, while not nearly as broad and all-encompassing, do include warranty claims counts (above a threshold) for certain types of components. GM requests confidential treatment of the data in those reports.

GM's responses to NHTSA's information requests often include warranty data for a limited number of makes, models, and years and for a handful of labor operations. Even the warranty data provided by GM to NHTSA in response to the broadest of NHTSA's

#### Product Investigations

Mail Code: 480-106-304 • 30500 Mound Road • Warren, MI 48090-9055  
Phone: (586) 986-8029 • Fax: (586) 947-2318



requests is miniscule compared to what would be required by the proposed early warning rule.

Suppliers to GM can obtain specific warranty data from GM and they are encouraged to do so as part of the continuous improvement process and to detect and resolve early field issues. Suppliers do not have access to total vehicle warranty data and are instructed that the data made available to them is GM's proprietary information and is not to be disclosed by suppliers to unauthorized employees or to persons outside of their companies.

GM knows of no situation in which it has disclosed to the public a compendium of warranty data comparable to what NHTSA seeks under the proposed early warning rule.

## II. Manufacturers Will Be Harmed by the Competitive Use of "Early Warning" Warranty Data

### A. Use of Field Experience Information By Competitors Will Cause Competitive Harm

Warranty claims represent costs borne by manufacturers. When they are aggregated by make, model, and year and by vehicle system categories, even counts of warranty claims provide an index of a manufacturer's costs. Cost information is, by its very nature, competitively sensitive.

Increasingly, vehicle manufacturers purchase entire systems from suppliers, such as steering and suspension, heating and cooling, seats, occupant restraints, or even entire interiors. With disclosure of "early warning" warranty data, vehicle manufacturing competitors would gain information not otherwise available to them about the warranty claims experience of systems made by various potential suppliers that would give them an advantage in selecting suppliers at the expense of one of their competitors.

For example, if supplier A offers a newly-designed system to OEMs, any OEM can tear it down and test it, but no practical test duplicates the experience that is gained from having the system in hundreds of thousands of vehicles. If OEM1 makes the investment to put the system in some of its vehicles, it would gain that field experience and could use it to make better decisions about the future use of the system. With early warning warranty data disclosure, other OEMs would have access to some of the same information and would be able to make their decisions with less extensive testing and analysis. Through the loss of its confidential information, OEM1 is forced to subsidize the other OEMs, reducing their costs at OEM1's expense. The law provides for the protection of confidential business information to avoid this unfair result.

OEMs also compete for aftermarket sales with many other companies. Release of early warning data will give the non-OEM competitors information not otherwise available to them that will help them make decisions about what parts to produce, what quantities to manufacture, and what prices to charge. This is another source of competitive harm to OEMs.

**B. Media Reports and Advertising Claims Based on Invalid Comparisons  
of Warranty Claims Will Cause Competitive Harm**

Through the submissions of the Alliance and others and from other experience with warranty data, NHTSA knows that vehicle manufacturers have different warranty data and different warranty policies. Those policy differences include not only differences in time and mileage limits, but also scope differences, such as with regard to coverage of tires.

The proposed early warning rule adds another level of differences—manufacturers have to correlate their classifications with NHTSA's 22 categories. One manufacturer will classify engine control module repairs in the "engine" category and another will put them in the "electrical" category and then this will be repeated hundreds or thousands of times, making comparisons of data by NHTSA's categories invalid.

There is a lot of criticism of comparing apples-to-oranges, but even that involves only two kinds of fruit. Comparing warranty rates among manufacturers by NHTSA's categories will not even approach that level of validity. In explaining how it will use early warning data, NHTSA said it will look for trends. 66 Fed. Reg. 66190, 66213 (Dec. 21, 2001). It did not say that it will make comparisons of rates between manufacturers and there are ample reasons for it not to do so.

If the early warning warranty data submissions of all manufacturers are disclosed, it is inevitable that they will be used by others to make comparisons between manufacturers. Competitors may point reporters towards certain early warning data in the hope of getting favorable media coverage. But a reporter examining warranty data submitted to NHTSA will not find the mileage, time, and coverage limits of each manufacturer's warranties. Without knowledge of those differences, the reporter may conclude that manufacturer A's product is better because it has fewer warranty claims than manufacturer B's product, when the only difference is that manufacturer B's product has more generous warranty coverage.

Advertising that claims a manufacturer's product is superior in quality or some other respect and that purports to be based on objective, reliable data can be a powerful and effective marketing tool to convince buyers to buy the advertiser's product rather than its competitor's. When such advertising claims lack a reasonable basis, however, not only are consumers misled but competition is harmed. While it might be tempting to say that this is the domain of another agency, it is NHTSA's responsibility to prevent competitive harm from the disclosure of confidential business information that it collects. Certainly the Federal Trade Commission can issue cease-and-desist orders and penalties, but news of it doing so is unlikely to have anything close to the impact on consumers of the misleading claims.

We understand that legitimate competitive disadvantage brought to the consumers' attention by truthful, substantiated comparative claims in advertising is not the type of competitive harm that is considered in the context of Exemption 4, but that is not the situation here. This data will be used to make comparative claims of superior quality, reliability, and durability that are misleading and inaccurate because of the lack of

comparability of the underlying data. That is the type of competitive harm that is a proper basis for giving this data confidential treatment. *Worthington Compressors v. Costle*, 662 F.2d 45 (D.C. Cir. 1981).

In considering of one of its consumer information rules, NHTSA recognized that some stopping distance information could not be used by consumers to make valid comparisons between vehicles and it took action so that consumers would not be misled:

This rule amends the Consumer Information Regulations by rescinding the requirement that motor vehicle manufacturers provide information about vehicle stopping distance. Upon reevaluation of the vehicle stopping distance information requirements, NHTSA concludes that this information is of little safety value to consumers and might even be misleading.

60 Fed. Reg. 32918 (June 26, 1995).<sup>1</sup>

In the same spirit, NHTSA should prevent the competitive harm that would occur from the misleading use of early warning data comparisons in advertising.

### III. Conclusion

Because of the competitive harms that disclosure of early warning data will cause, Exemption 4 applies and the data should not be disclosed. Disclosure of early warning data will not improve vehicle safety. NHTSA's efforts will not be advanced if it is distracted by numerous public inquiries about meaningless, random variations in its data.

---

<sup>1</sup> The importance of having data that can be used by consumers to make valid comparisons has also been highlighted by NHTSA in the context of the New Car Assessment Program:

Title II of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1941 *et seq.*) requires the development and dissemination of comparative information on the crashworthiness, damage susceptibility, and ease of diagnosis and repair of motor vehicles. The foundation of Title II is the belief that, if consumers have **valid comparative information** on important motor vehicle characteristics, they will use that information in their vehicle purchase decisions, thereby encouraging motor vehicle manufacturers to improve the safety and reliability of their products.

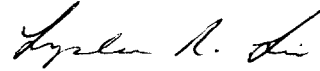
52 Fed. Reg. 31691 (Aug. 21, 1987) (emphasis added).

Letter to Dr. Runge  
RE: Confidential Business Information  
Docket No. NHTSA 2002-12150  
June 28, 2002  
Page 5

USG3692

GM also asks NHTSA to adopt the suggestions in section II of the Alliance letter on other Part 512 issues.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lyndon R. Lie".

Lyndon Lie  
Director  
Product Investigations

c: Jacqueline Glassman, Esq  
Chief Counsel